

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

JOSE ALFREDO PORRAS-MUNIZ	§	
VS.	§	CIVIL ACTION NO. 1:19cv349
WARDEN FCC BEAUMONT LOW	§	

ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Jose Alfredo Porras-Muniz, proceeding *pro se*, filed the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this Court. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending that a motion to dismiss filed by the respondent be granted.

Petitioner complains of two disciplinary hearings held concerning incident report 3117044. While petitioner was found guilty following the first disciplinary hearing, the results of that hearing were expunged. As a result, the Magistrate Judge concluded petitioner's complaints about the first hearing were moot. With respect to the second hearing, the Magistrate Judge found that as petitioner did not actually request a staff representative or witnesses at this hearing, he was not denied due process of law. The Magistrate Judge further concluded petitioner did not have a constitutional right to a staff representative and that as petitioner had not identified any witnesses he wanted to testify on his behalf or described the testimony they would have given, he had not demonstrated he suffered prejudice as a result of not being able to call witnesses.

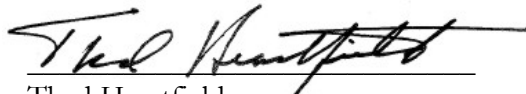
Given that the results of the first hearing were expunged, the court agrees that any complaints petitioner has regarding this hearing are moot. In his objections, petitioner states he did request witnesses at his second hearing. He also identifies the witnesses and states they were prepared to rebut the charges against him. Petitioner's contention is not supported by the record. The Discipline Hearing Officer's report regarding the second hearing states petitioner did not request witnesses.

Moreover, even if it assumed petitioner did request witnesses at the hearing, he has not shown there is a reasonable probability the result of the proceeding would have been different if the witnesses he identified had testified on his behalf. As a result, he has not shown he suffered prejudice as a result of being denied witnesses. *See Hallmark v. Johnson*, 118 F.3d 1073, 1080 (5th Cir. 1997) (upholding denial of habeas relief where petitioner failed to demonstrate prejudice as a result of being denied a procedural protection).

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. The motion to dismiss is **GRANTED**. A final judgment shall be entered dismissing the petition.

SIGNED this the **9** day of **September, 2020**.


Thad Heartfield
United States District Judge